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February 27, 2023

Via ECF

Hon. Laura Taylor Swain
United States District Court
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Aldana v. GameStop, Inc.*, Case No. 22-cv-7063 (LTS)

Dear Chief Judge Swain:

GameStop provides this brief response to Plaintiffs' counsel's February 23, 2023 letter, because counsel therein makes arguments that go beyond the limited scope of *Martin v. Meredith* and could have been raised in its Opposition to GameStop's Motion to Dismiss. *See* Letter from P. Fraietta at 2 (engaging in further arguments on the separate "video tape service provider" requirement). GameStop has addressed why video games are not "similar" to content found in video tapes under any theory—cut scenes-based or otherwise. *See* Opening Mem. at 1-12; Reply at 1-5. GameStop has also explained that television series like Ken Burns's *Baseball* qualify as "similar audio visual materials," such that disclosure of such a purchase would identify the "specific video materials or services" obtained. 18 U.S.C. § 2710(a)(3). The same is not true of video games. For full analysis of these issues, GameStop directs the Court simply to the parties' briefs under submission.

Respectfully submitted,

/s/ *Sheri Pan*

Sheri Pan

cc: SwainNYSDCorresp@nysd.uscourts.gov (via email)
All counsel of record (via ECF)